

APR 25 1997



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WT Docket No. 97-81

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

April 20, 1997

Gentlemen:

I am greatly concerned by the letter (*enclosure "A"*) I recently received from Elliot J. Greenwald, of Fisher Wayland Cooper & Zaragoza, Washington DC, informing me that the FCC is considering dismissing the applications for Multiple Address Systems (MAS) licenses which were made five years ago in anticipation of a lottery.

If this proposed amendment is approved I stand to lose my entire investment, including the application fees, business plans and developmental costs. It just isn't fair. I expressed these sentiments to Senator John Ashcroft and Representative Richard Gephardt in an e-mail and letter dated March 30, 1996 (*enclosure "B"*) and was counseled that I should contact *Mr. Bob James, Asst. for Microwave Services, Federal Communications System.*

After numerous conversations with Mr. James who courteously informed me that he was powerless to help me, I finally wrote the enclosed note to my associates, dated Jan. 10, 1997 (*enclosure "C"*) asking him to confirm or correct my information. After several calls and voice mails, I still have not heard from him.

You must know, I am not a rich man or a major corporation. I had planned this investment to pay for my grandchildren's education. As I see it now I risk losing every penny... let alone any appreciation I had anticipated. I would appreciate your action to convert my application into a geographic area for which lotteries could be held.

Sincerely,

Allan C. Gordon
1422 Lark
St. Louis, MO. 63122

No. of Copies rec'd

083

ENCLOSURE(A)

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MEMORANDUM

TO: MAS Clients

FROM: Eliot J. Greenwald

DATE: April 14, 1997

RE: FCC Auction Proposal

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In its Notice of Proposed Rulemaking for WT Docket No. 97-81, *Amendment of the Commission's Rules Regarding Multiple Address Systems*, the Federal Communications Commission ("FCC") proposed to adopt geographic area licensing for Multiple Address Systems ("MAS") and to license such areas by auction. The FCC also proposed to dismiss the MAS applications that have been pending for over five years.

The FCC provided several reasons for its proposed dismissal. It argued that the large number of pending applications and potential markets would result in greater processing costs and delay in service from using a lottery rather than an auction. Second, the FCC argued that because of the rule changes resulting in geographic area licensing rather than site specific licensing (as was applied for), the processing of the pending applications would be inconsistent with the new licensing approach. Therefore, the FCC claimed that "the pending applicants would in any case need to substantially rethink their initial plans." Lastly, the FCC argued that the pending applicants could have applied for other spectrum to carry out their business plans during the pendency of their applications, and thus would not be harmed by the dismissal of their applications. The FCC concluded by stating that the strong public interest factors in favor of using auctions outweighs the expectations of those applicants, who, in good faith, expected to participate in a lottery and, if successful, provide MAS service.

We will be filing comments with the FCC opposing the dismissal of your applications and opposing the use of auctions. We will also request that should the FCC not agree with us and dismiss your applications anyway, then the FCC should refund your application filing fees to you. As you may recall, the majority of your expense regarding your MAS applications was the payment of the FCC application filing fees.

In addition, we urge you to file your own comments by writing a letter to the FCC. You would need to file an original and four copies with the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Alternatively, you may file informal comments by electronic mail by addressing them to bjames@fcc.gov. Whether you file formally or informally, you need to write WT Docket No. 97-81 on the first page. You must also include your name and mailing address with your comments.

If you file comments, we urge you to explain that you filed your MAS applications over five years ago so that you could provide MAS service. It is simply unfair for the FCC to dismiss your applications. If a private business were to do what the FCC is proposing to do, you would be able to sue them for fraud and a host of other violations. In addition to FCC application fees, you spent considerable amounts on business planning, engineering and legal, and that investment would be lost if your applications were dismissed. It has been some time since the FCC processed your applications and prepared a lottery list, and the main cause of the delay has been the FCC's failure to release the lottery list. A lottery would not result in processing delays, because the lottery list has already been prepared. The FCC need only release the list and hold the lottery 60 days later. Although the FCC claims that you could have filed for other spectrum, the fact of the matter is that you did not, because you expected the FCC to process your applications and hold the lottery. It is the FCC's fault for not holding the lottery; not your fault for not filing for other spectrum. In addition, if the FCC wishes to license by geographic area rather than by transmitter site, it would be no problem for you if the FCC converts your application into a geographic area application for the geographic area that contains your transmitter site. That would allow the FCC to hold a lottery for your applications that have been pending for over five years and also allow the FCC to issue geographic licenses. Lastly, in the event the FCC does decide to hold an auction and dismiss your applications, then you insist that the FCC refund your application fees, because you would not be getting the lottery that you paid for. If the government charges for a service that you do not get, you are entitled to a refund of your fees.

Comments are due April 21, 1997, and reply comments are due May 6, 1997. We urge you to get your comments in to the FCC.

ENCLOSURE (B)

Date: Sat, Mar 30, 1996 8:57 PM EDT
From: AllanG8009
Subj: Lack of action on MAS!!!!!!
To: john_ashcroft@ashcroft.senate.gov

I am very angry and disillusioned. I'm writing to you to express my outrage concerning the way the Federal Communications Commission has delayed action on applications for Multiple Address Systems (MAS) that were filed more than four years ago in the first quarter of 1992. While the applications were pending, Congress enacted the Budget Reconciliation Act of 1993 which gave the FCC auction authority. However, Congress gave the FCC the option of holding lotteries for pending applications that were filed prior to July of 1993 in anticipation of lotteries.

In response to the 1993 Budget Act, the FCC considered the question of whether to license the pending MAS applications by lottery or auction. In the Spring of 1994, in its Second Report and Order in the auction proceeding, the FCC UNANIMOUSLY decided to hold lotteries to resolve the pending MAS applications. However, two years after that decision and four years after the applications were filed, the FCC has still not issued a lottery list for the pending MAS applications.

I am anxious to have the opportunity to provide MAS service to the public. I have spent a great deal of money in FCC filing fees as well as professional fees for the preparation of my MAS applications. It is simply UNFAIR for the FCC to wait more than four years and still not set a lottery date. I would urge you to direct the FCC to issue a lottery list, set the lottery date and hold the lottery for pending MAS applications. All I am asking for is to receive from the FCC the services I have already paid for -- that is, an opportunity in the lottery so that I can get into business with my sons.

I am 65 years old and wanted to share this opportunity with my two sons. If I had invested this money four years ago it could have more than doubled. I know of your concern for senior citizens and hope you will do whatever is within your power to correct this injustice.

I would appreciate a response telling me what action you plan to take on

this vital issue.

Allan Gordon

AllanG8009@aol.com

ENCLOSURE (C)

MULTIPLE ADDRESS SYSTEMS (MAS)

FCC INFORMATION – Jan. 10, 1997

Information from Bob James, Asst. for Microwave Services, FCC

Bob James was located for me by Paul Kaltschreener of Sen. John Ashcroft's office. No word from Gephardt as of 1/13.

James confirmed that applications for MAS were filed in 1992. While apps. were pending, Congress passed the Budget Reconciliation Act of '93 which gave the FCC auction (goes to the highest bidder) authority, but also allowed the FCC the option of holding lotteries for pending applications filed prior to July, 1993 since, before that date, it was anticipated/assumed that lotteries would be held for the pending applications.

However, according to James, the only services that were exempt from auction (eligible for lottery) were those that were *not* subscriber based (subscriber based includes debit card processing, etc.) Since an unexpectedly large number of applications were subscriber based the FCC has held up on a decision on which way to go. Will it be a lottery or auction? They have even considered going to competitive bidding.

The next step, as I (vaguely) understand it is that the FCC must release a document to go through a public hearing, allowing time for interested parties to comment on the program. After sufficient time, legislation will be enacted so the FCC can set the lottery date or hold the auction or put the wavebands up for competitive bidding, etc.....

In the meantime, our money is stuck. I told James I cannot write off my application and accompanying fees, nor can I cash it in or sell it. It is lost money, not gaining interest, that is snagged in the FCC bureaucracy. I asked what would happen to my investment if the auction or the bidding process won out and he admitted he really didn't know. Eliot J. Greenwald, Esq., council for the parties holding applications said earlier that if it went to auction we would get our money back.... some of it.... he wasn't sure how much.

James indicated he had no authority to do anything about this matter. So, I encouraged him to find someone who did have some influence and see if he could get us a more definitive idea of what may happen... even if he had to go to the Director of the FCC. He agreed somewhat reluctantly to see what he could do and call me back. If I don't hear from him by Friday, 1/17, I will call him.

He opined that this had been a very high risk investment in 1992 because the FCC had no authority to license the pending applications by auction or by lottery... and had made no commitment to either process. It was only in the 1994 Second Report and Order that the FCC approved the lotteries... and James was not sure that it had a 100% vote as Greenwald had indicated.

So, we are stuck.

Had we invested the same amount of money in 1992 and it earned at the Standard and Poor average, we could have increased our investment by 305%. By the year 2,000 it would have increased 745%.

I'll see what I can do.

More later

Bob James phone # -- 202-418-0798